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CRIMINAL LAW IN FRANCE.

BY MADAME ADAM.

DURING a recent visit to Aix in Provence I found the country in a state of excitement over a case about to be tried at the assizes, members of the most united families being divided into hostile camps: those who thought "Cauvin guilty," and those who thought "Cauvin innocent." To throw light on my faith, I listened, I inquired. Before the verdict was rendered, I formed an opinion of my own from reading the newspapers. I felt that Cauvin was guilty. After the verdict, the accounts of those who witnessed the trial, the absolute lack of any proof of the prisoner's guilt, and the reading of his lawyer's plea, led me to believe Cauvin innocent.

I shall relate the story of the Cauvin case at the close of this sketch, but meanwhile my readers may share my desire to understand the workings of criminal law in France. The idea that an innocent man had been condemned so moved me that I was anxious to know what guarantees my country's justice offered to any poor fellow who might be *accused, arraigned, and convicted*,—the three stages through which a criminal or supposed criminal passes.

Before I made this study of French legal methods I was shocked by what I may call the moral torture inflicted on the accused by the examining magistrate, which stirred me to revolt. I was sincere in thinking of the great degree of inferiority of a poor, ignorant wretch, to whom words are traps, who knows not how or what to answer, who finds himself drawn by the judge into a network of contradictions, who has often almost forgotten what he did on a certain day, at a certain hour, after the lapse of weeks or months, who gets all in a muddle, contradicts himself, and persists in what seems a stupid line of defence, when

we compare him with the logical man, the sensible, intelligent judge, eagerly bent on incriminating the culprit, and who is convinced that he has found and cornered him. I felt that verily in this, our free and equal land, there was a flagrant inequality between a country bumpkin cross-examined by the examining magistrate and a professor of rhetoric accused of the same crime.

I do not know how *causes célèbres* are conducted in America, but in France we all lose our heads, discuss the probability of guilt, argue the case one way or the other, discover or deny proofs, and, if we see any possibility of innocence, a mighty current of thought is formed which sways the press and might well influence anybody, however constituted, whether politician or otherwise, but which, incomprehensible as it may seem, has no power over the French magistracy.

What is this magistracy and what does it represent? What sacred power does it exert? What high ideal inspires it? What code of morality guides it? Whom does it feel that it defends?

In America and in England a magistrate recognizes in himself no right to prejudge a case. The accused, until he is found guilty, is innocent in the eyes of an English or American judge, who treats him as such and often helps him to clear himself. In France, on the other hand, the magistrate defends society against crime and strives to wring a confession from the prisoner before he is convicted. The person accused, considered as the one upon whom the burden of suspicion and accusal rests, must furnish proof of his innocence at the outset of proceedings against him, or else he must appear at the assize court, his accusers being the magistrates who have studied his case.

The perfect type of a judge in France, of a magistrate in whatsoever degree he may be invested with the power to interpret and apply the law, is that of a man of high, incorruptible moral worth, filled with profound respect for the judicial power which he wields, and with veneration for the laws.

To a French magistrate the laws seem meant to insure the reign of peace among men—a noble principle—for the realization of which he labors with kindness but at the same time with firmness; for if peace is to reign among men the laws must be obeyed, whether voluntarily or by force. Magistrates obey a higher authority, the living image of the arsenal of the laws, namely, Justice. They serve justice by executing her decrees

Justice has, for many ages, been represented with a pair of scales in one hand that she may weigh with the utmost precision the rights of all those who approach her sanctuary, and with a sword in the other that force may, if necessary, insure the execution of her decrees. With scales alone justice would be a mere personification of impotency; with the sword without the scales, she would be the personification of brute force. Without justice, without her constitution, without her official and efficacious machinery, laws would be of no avail, since they might be violated with impunity. Justice is, therefore, a necessary institution. In order that she may fulfil her destined end she must be ever ready to be set in motion by those who impersonate her, nay, more, she must never under any pretext refuse her aid.

Article IV. of the French Civil Code declares that "the judge who shall refuse to utter judgment on the plea that the law is silent, absurd or insufficient, may be prosecuted as guilty of refusal to administer justice." A judge, therefore, must enforce the law, even should it seem to him false and unjust—*dura lex, sed lex*. But, you may ask, will not his conscience rebel? No. A judge is a priest of Justice, he cannot dispute her dogma. If the sentence which he pronounces be unjust, his conscience cannot be burdened, for the blame rests with the legislator.

The judge is appointed to judge according to the law, and not to judge the law. D'Argentré has said that a man must be mad to think himself wiser than the law. Can we conceive of a judge free not to enforce the law because he happens to consider it unjust? That would be the source of the gravest abuses. There would be no more law. It would be replaced by the conscience of the judge. If each judge understood equity after his own fashion there would be almost as many versions of equity as there are judges.

The legislator, therefore, is alone responsible. The mouthpiece of the social interest of the general interests, he enacts laws in view of those interests. As for the judge, he is merely the mouthpiece of private interests; he is charged with but one special duty—to cut short any conflict which may arise between individual interests.

Thus we see that the law is binding on all citizens, but the judge's decision is binding only on those who are concerned in the case. The legislator has the initiative of the laws, the judge

has only that of his own decisions ! The first has the power to modify the laws which he has made, to any extent, but it is a singular fact, and one which, in my opinion, makes him at once the superior and inferior to the legislator, the judge can never change a sentence which he has once pronounced ! It ceases to belong to him from the moment that he utters it. It becomes final, unalterable, so far as he is concerned, and can only be modified by other jurisdictions.

The functions of the legislator and of the judge are, therefore, so wholly unlike, that it was highly imperative that they should be confided to different powers. Montesquieu tells us that "There is no freedom if the power to judge be not separated from legislative power." Every successive constitution in France since 1789 has held this principle sacred. So, too, Article V., of our Civil Code, reads thus : "All judges are forbidden to decide by any standard and universal rule in such cases as may be submitted to them." This requires explanation.

Under the old French monarchy, in old French law, before the Revolution, our famous Parliaments, powerfully and authoritatively, though they more than once resisted the king, constantly strove to encroach upon the privileges of the legislator. Whenever it was possible, they rendered a standard and universal decision, known as a decree (*arrêt*), in such cases as were submitted to them. Not only did these Parliaments judge the case in hand, but they declared that they should always, in future, decide similarly and after the same fashion in all like cases, and they ordered courts under their jurisdiction to do the same. Was this law ? They were, however, subject to the pleasure of the king ; hence the conflicts with which our history is filled.

Now let us see how justice proceeds from the moment a crime is discovered.

The public prosecutor appointed to check crimes, misdemeanors and offences, seeks out and pursues offenders. Crime is an act punished by law by a penalty either at once afflictive and ignominious, such as death, hard labor, transportation and solitary confinement, or merely ignominious, as banishment and civic degradation. In France all crimes are tried by the assize courts. A special offence, however, such as the famous Boulanger affair, may be referred to the Superior Court (*Haute-Cour*), as may also such crimes as high treason and attempts against the person

of the chief executive power or against the safety of the State.

The public prosecutor, whose appointment is a pledge for the safety of every citizen, is invested with a double power called *actions* or *suits*. The first, known under the name of *criminal action*, protects society whose order the criminal has disturbed ; the second, *civil action*, protects the members of that society and defends them against offenders who have injured their interests.

When a crime is committed, the public prosecutor, that is, the attorney-general of a court of appeal or the ordinary attorney of a lower court, repairs to the scene of the crime, to collect all the information he can discover, and on his return directs the examining magistrate to draw up the bill of indictment. The latter, in his turn, searches for the culprit, questions the witnesses, and orders the arrest of all suspicious persons. He is invested with unlimited power in order to ascertain the truth.

When the guilty person, or the one suspected to be such, is caught, and when the judge has heaped upon his head all the proofs which condemn him or seem to condemn him (and this is where my sensibilities are again aroused and I tremble for the innocent man), the poor terrified wretch, seeing the charges which overwhelm him, may feel that he is deserted by all ; but at this point the judge closes his examination and hands over the brief to the attorney-general in order that the judicial grand jury (*Chambre des mises en accusation*) may decide upon the further conduct of the case.

In reply to the alarm which I have just expressed; I give a decree of the Court of Appeal, dated June 28, 1839 :

"Let us here be permitted to combat a serious and persistent error which is, however, beginning to die out, thanks to the better diffusion of knowledge. We refer to the gratuitous and injurious idea that as the prosecutor always acts for the prosecution, as he sees criminals on every hand, he can only form harsh conclusions if he is to be consistent with the purpose of his appointment, and that, regarding every acquittal as a defeat, he considers every conviction as but one success the more. Those who have a more correct idea of his high functions know that, as the defendant of all interests, it is his duty to protect even those of the person accused when they seem endangered, and to act or decide only to assure the triumph of justice and truth."

With the judicial grand jury the innocent prisoner begins to feel more certain that his innocence will be recognized. The attorney-general may, perhaps, have been influenced by countless incidents or evidences while at the scene of the crime, and the judge may be led astray by some false scent during the examina-

tion, but with the grand jury actual facts alone speak and plead with men whom nothing can influence. This grand jury differs from other branches of the Court of Appeal, which are composed of seven counsellors, in that it consists of but five. It decides whether or not the prisoner shall appear before the Assize Court.

Allow me to interrupt this somewhat serious description of justice in France to relate a piquant adventure which befell a friend of mine, M. Henry Machemin, examining magistrate and now assistant judge of the common law court at Nice. One of his villas at Toulon was entered and various valuable articles, including clothes and jewelry, were stolen. There was no evidence that the house had been broken into; the door had simply been opened with the key which was inside. An examination of the premises revealed the fact that the thief, with unparalleled daring and audacity, had contrived to climb upon the roof, and, at the risk of breaking his neck, had entered through an open skylight, had quietly spent the night in the house, and, after eating and drinking such delicacies as he found, dressed himself from head to foot, and left his rags, carefully hung up in the dressing room. To cap the climax he left behind him a card on which was written: "You who are so clever, Judge Machemin, find out who I am if you can."

The judge's rage and desire to discover the rogue may be easily imagined. He left no stone unturned. The whole constabulary took the field. Every known receiver of stolen goods was searched. The police joined in the quest heart and soul, but for a whole year no clue was discovered. Meanwhile Judge Machemin unravelled the most intricate cases, ferretted out the most undiscoverable criminals and received the reward of his merits, being made chief judge of the civil court at Nice.

One day while he was on the bench a well-dressed fellow was brought before him, charged with theft.

"Excuse me," said the judge, "but would you hand me your hat?"

"Highly flattered," said the prisoner, "that you should wish the address of my hatter."

"I should also like that of your tailor; please hand me your overcoat."

"With pleasure; will you have my shirt and trousers too?"

"That is not necessary," replied the judge. "I know where

they come from, as well as your shoes and probably your stockings. I am Judge Machemin from whom you stole them."

The man never flinched. "Well, sir," he said, "I must admit that your clothes were of excellent make. They have done me good service, but your shoes were only tolerable, they wore out in six months."

The judge could not help laughing.

"No offence," said the thief, who saw that his victim was not too irascible; "I confess that I took very few carriages and walked a great deal in them."

"Well, I have found you out at last," said the judge, "and you shall pay for your insolence, as well as for the many crimes of which you are accused."

"You did not find me out, sir; I must insist upon that. Chance delivered me into your hands, that is all. It was inevitable, since I allowed myself to be caught; but if I had known that you were to judge me I should have chosen a different court. You know that I never steal for the mere sake of stealing; I steal when my clothes and my resources require renewing; I am a philosopher."

As told by the Judge, this story is one of the funniest I ever heard.

We have now reached the point where the prisoner is about to appear before the jury. How is a jury made up and in what manner is it recruited? The law reads: "Every Frenchman in the enjoyment of his civil and political rights may be a juror." Now, what are we to understand by civil and political rights? Rights in general are the advantages which the law accords to individuals of one and the same nation. Political rights are those of private individuals in their relations with the State. These rights are more important in that the working of public affairs depends upon the majority. In America, in France, and in Switzerland citizens have the most extensive political rights, since each man may form an integral part of the State and become a legislator. Civil rights are those of individuals to each other.

The jurors are drawn by lot in the country town of each department from lists prepared by justices of the peace. Save in pressing cases, duly established and attested, twelve jurors and two supplementary jurors are forced to obey their summons.

The supplementary jurors do not sit unless some one of the twelve is taken ill or is incapacitated by night sessions in the jury room (*salle des délibérations*). When any malefactor of the vicinity, who is reputed to be dangerous, is to be tried, one whose relatives threaten the jurymen, or whose accomplices are not yet discovered, as, for instance, a Ravachol, we may imagine the excitement that reigns among peaceful citizens and timid peasants whom everything alarms.

The assize court is composed of an assize judge and two assistant judges. The jury are seated in the court room to the right of the judge. They have no special costume, but wear their ordinary dress. Sometimes they appear in blouses. The prisoner faces the jury. They ask no direct questions, but may interrogate the prisoner or witnesses, through the judge, on any point likely to afford them information, and may also demand to see all articles offered in evidence by the public prosecutor to prove the prisoner's guilt. They hear the argument of the public prosecutor, who pleads for the indictment which he has prepared, and then those of the defence, and form a truly enlightened opinion from the depositions of the witnesses on both sides. When the trial is concluded the judge, in the presence of the court, reads to the jury the questions which are submitted to them, and reminds them of the duties which they are to perform. It is usually a question of the honor or dishonor of a family; of life or death for a fellow man. In the centre of the room is a long table with six separate partitions or boxes on each side. At the head of the table is a box for the foreman, containing a wooden urn.

From the moment the jury enter this room they are alone. The foreman puts the questions to them and they discuss them. The jury is usually divided into two almost equal camps. There are the indulgent ones, who answer the most incontrovertible evidence with the everlasting "What does that prove?" and there are those who, even when the crime is but ill-proved, declare that "society must be rid of such people." The foreman finds it hard to seize the opportune moment when the jury are almost agreed in their readiness or reluctance to vote one way or the other. Then he states the question anew. The jurymen seat themselves at the table, each in his box, where he cannot see what his neighbors write. One by one they rise and place

their folded ballots in the urn. The form of the ballot is: "Upon my honor and my conscience I declare that," etc.

When it is impossible for them to agree, the judge is called in to assist. My noble old friend, Raoul Duval, ex-judge of the court at Bordeaux, once told me that he was called to the aid of a jury at a time when education was far from universal in France, and was asked how they were to cast their votes, for the foreman had no better idea than the eleven other jurymen, nor had any of them understood the questions which the judge read over to them in the court room, and which it was their duty to answer. Raoul Duval said: "You must each write on your ballot, 'Upon my honor and my conscience, I declare that such an one is or is not guilty.'" All but one wrote literally: "Upon my honor and my conscience, such an one *is or is not* guilty!" He was obliged to explain afresh that a man cannot be at the same time *guilty* and *not guilty*.

Another friend of mine, from lower Brittany, related to me that being empanelled upon a jury, and being aware, owing to circumstances which he could not reveal, of the entire innocence of the prisoner whose fate he and his colleagues were called upon to decide, he strove in vain to persuade them to bring in a verdict of "not guilty," but despaired of ever doing so. Luckily the prisoner's name was Mary. Struck by a sudden inspiration he exclaimed: "A descendant of the Virgin Mary cannot be guilty. Come, what do you say?" All voted for an acquittal!

The verdict rendered, the foreman signs and dates it. The jury then return to the court room. The spectators are ordered to bare their heads. The prisoner, who had been removed, is brought back to hear the sentence. After this final moving formality, the jury have done their work in that particular case. If they bring in an acquittal the case is ended; if they decide that the prisoner is guilty, with or without extenuating circumstances, it is for the judges to impose the penalty provided by law.

The case which led me to all these dissertations on law, justice, and the French mode of procedure came up at the assize court at Aix in Provence. The court house in that interesting and curious old town, where memories of different periods of French history meet us at every turn, is a remarkable structure. To this most imposing building Cauvin was brought after a term of imprisonment on suspicion, his guilt

having been proved according to the process which I have already described.

A man above the common, living at home with his wife and her parents, a man of letters, an idealist, giving evening receptions of a literary character, reputed as one of the most honest and the best of men, Cauvin appeared last June before the jury of Aix, accused of strangling an old woman, a rich widow, his accomplice being a sixteen-year-old girl, the servant of the murdered woman.

What was the motive for this crime?

The prosecution showed that the woman was his benefactress, that she had brought him up and had made a will in his favor. Disputes arising between them, Mme. Mouttel was said to have threatened to alter her will in favor of a brother whom she had disinherited for Cauvin. During the cross-examination, the maid, Marie Michel, who had been taken from a foundling hospital, and who was a girl of no moral character, gave three different versions of the murder, although she always declared that Cauvin had strangled Mme. Mouttel and that she had herself held the hands of her mistress. Cauvin absolutely denied the charge and his servant as well as his wife and her parents asserted that he did not leave the house until Mme. Mouttel's maid rang at his door to tell him that her mistress was dead. There was no evidence that Cauvin strangled Mme. Mouttel except the statement of the servant, who contradicted herself three separate times. Cauvin's lawyer was so convinced of his client's innocence that he threw his whole soul into his defence, and when the verdict was rendered sobbed aloud in court.

Popular opinion in and about Aix was divided into two contrary currents; one for and the other against Cauvin. A certain soldier, who left Aix to rejoin his regiment, and who was unable to explain how he passed his time during the night of the murder, was suspected by those who believed Cauvin innocent. Owing to lack of proof, the verdict condemning Cauvin to hard labor for life, and acquitting the girl, Marie Michel, as irresponsible, was set aside.

Our Court of Appeal, on the pretext of some flaw in the form, frequently sets aside a sentence which it considers ill-judged. When the Court of Appeal invalidates a verdict, the case is brought up again before another court, but one of the same

order and degree as that which originally tried it. The new court, to which the case is referred, retains entire freedom of action; it may confirm the first verdict or render another. In the latter case, a fresh appeal to the Supreme Court may be made.

If the verdict be again set aside by the Supreme Court, which on this occasion assembles all its branches—the Court of Petitions, Court of Common Law and Criminal Court—the tribunal to which the case is then referred *is to judge* as if it were the Court of Appeal. The law of April 1, 1837, declares that the opinion of the Supreme Court is final and prevails over that of any or all other courts or tribunals.

Cauvin will, therefore, be tried again at the next assizes. The verdict acquitting the girl, Marie Michel, however, cannot be reversed. She will, therefore, re-appear face to face with Cauvin, not as a prisoner, although she confessed that she was accessory to the crime, but merely as a witness.

Will fresh proof be brought forward for or against Cauvin? I do not doubt it, for, as we have seen, French justice controls and revises its own actions and moves without undue haste. If it be stern with the guilty in order to preserve society, it also allows the innocent the power and the means to prove their innocence.

JULIETTE ADAM.